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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILLIP KASSAI,

Plaintiff,

— against —

DRINKS AMERICAS HOLDINGS, LTD.,

Defendant.

Civil Action No. 07 Cv 5590 (RMB)(AJP)

**OBJECTION TO DEFENDANT'S REQUEST TO OVERRULE
MAGISTRATE PECK'S ORDER DENYING DEFENDANT
ANOTHER EXTENSION OF THE DISCOVERY DEADLINE**

Plaintiff, Phillip Kassai, by undersigned counsel, respectfully submits this brief response in opposition to Defendant's December 27, 2007 motion to overrule the decision of Magistrate Peck and in opposition to Defendant's request for an extension of the discovery deadline.

1. Defendant's failed to answer Plaintiff's complaint filed on June 12, 2007 for more than two months until August 23, 2007.
2. Defendant's failed to respond to Plaintiff's first request for the production of documents served on September 17, 2007 until October 17, 2007 without the production of documents.
3. Defendant has never responded in writing to Plaintiff's second request for the production of documents served on November 13, 2007.
4. Three depositions previously noticed were scheduled, rescheduled and postponed on consent and at Defendant's request on more than one occasion.

5. Plaintiff has twice been compelled to request the Court's assistance in order to extract document production and discovery in this matter by requesting pre-motion conferences before the Magistrate.

6. At the very first discovery conference in this matter the Court made it abundantly clear to both parties that discovery would proceed swiftly and in fact at that initial conference, granted Defendant's request for a one month extension. (Exhibit 1, Transcript of Proceedings on September 10, 2007).

7. The deposition noticed by Defendant on November 26, 2007 in part for which Defendant seeks an extension, was of a witness included in Defendant's own FRCP 26(a) disclosures filed as early as September 24, 2007.

8. Plaintiff should not be prejudiced by unwarranted delay and dilatory discovery practice, particularly when Defendant has been on notice since as early as September 10, 2007 that discovery would proceed swiftly and timely in the resolution of this matter.

WHEREFORE, for all of the above reasons, Plaintiff respectfully objects to Defendant's request to overrule the December 17, 2007 Order of Magistrate Peck and objects to a further extension of time of the discovery deadline.

Dated: New York, New York
January 3, 2008

Moskowitz and Book, LLP

By: 

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